



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 415th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 May 2000, at 3 p.m.

Chairman: Mr. Burns

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.415/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Poland (continued) (CAT/C/44/Add.5)

1. At the invitation of the Chairman, the members of the delegation of Poland, Mr. Knothe, Mrs. Janiszewska, Mr. Przemyski, Mr. Sledzik, Ms. Zurek and Ms. Wyznikiewicz took places at the Committee table.
2. The CHAIRMAN invited the Polish delegation to respond to the questions raised by the Committee at a previous meeting.
3. Mrs. JANISZEWSKA (Poland) said that there was no definition of torture in Polish legislation because the Convention against Torture constituted a universally binding source of law under article 87, paragraph 1, of the Constitution and was applied directly by law-enforcement bodies. International treaties ratified by Poland took precedence over legislation passed by the national Parliament. With regard to the prosecution of specific acts covered by the definition of torture in article 1 of the Convention, articles 246 and 247 of the new Penal Code in force since 1 September 1999 introduced a new category of crime defined as the use of force or unlawful threats by a law enforcement official or anyone acting on his or her behalf to obtain testimony from a witness, court expert or interpreter. The new provisions, introduced in response to the recommendations of the Committee against Torture, also facilitated the compilation of statistics by singling out the perpetrators of that category of crime.
4. While it was theoretically possible under treaty law to denounce the Convention, such a step would constitute an infringement of the Polish constitutional norm prohibiting the use of torture and inhuman and degrading treatment.
5. With regard to responsibility for acts carried out under orders, she said that, under Polish criminal law, no one could be absolved of responsibility for criminal acts unless it was held that the accused had not committed a crime for reasons of non-accountability or because he or she was carrying out orders under specifically defined circumstances. Criminal responsibility depended on whether a person was aware that he or she was committing an offence. Although the new Penal Code introduced no significant change in that regard, it specified that a person who refused to carry out wrongful orders was not committing an offence. The superior who issued the order incurred criminal responsibility in the light of general principles and in cases where the subordinate refused to carry out the order. The superior could be held responsible for incitement and abetting.
6. The Polish Code of Criminal Procedure did not specifically mention torture as a reason for rejecting an application for extradition but prohibited extradition in cases where Polish law would be breached. The term "Polish law" comprised all international treaties to which Poland was a party, an interpretation confirmed by the Supreme Court in the case described in paragraphs 46 and 47 of the report (CAT/C/44/Add.5). The delegation was unable to provide precise data regarding specific countries that had applied to Poland for extradition of a person

present in its territory but would endeavour to do so as soon as possible. However, most applications during the reporting period had come from European countries with which Poland had extradition agreements, principally Germany. Applications had been rejected in cases where the person concerned had Polish citizenship, where the charge did not fulfil the requirement of double criminality, for example when the applicant country was the Russian Federation, or where extradition would constitute a breach of international norms.

7. With regard to universal jurisdiction, the new Penal Code provided for the prosecution of persons present in Polish territory who were charged with crimes subject to prosecution under international law and who could not be extradited.

8. The new Penal Code prohibited attempts to influence testimony during interrogation through the use of violence and unlawful threats or through hypnosis or the administration of chemical substances. Evidence obtained by such means was inadmissible.

9. Under the new Penal Code, there was no statute of limitations with respect to crimes against peace, crimes against humanity and war crimes. The same principle applied to international offences against health, life or freedom committed by public officials in the performance of their duties. Although the new provision could not be applied retroactively, the Polish legislature had provided for the prosecution of such crimes committed prior to the political changes of the previous decade. Thus, the regulations introducing the new Penal Code stipulated that limitations in respect of crimes committed between 1 January 1944 and 31 December 1989 operated with effect from 1 January 1990.

10. Under the 1997 Code of Criminal Procedure, the accused could opt to accept the penalty suggested by a prosecutor and to be sentenced without the hearing of evidence. Such proceedings took place in a court of law and only in cases where no doubt existed. The simplified procedure did not allow for conviction without trial and sentencing.

11. Mr. PRZEMYSKI (Poland) said that the commander of the police station in Lomazy who had fatally shot a suspect had stood trial on a charge of homicide and been sentenced to 15 years' imprisonment. The Court of Appeal had quashed the sentence, ruling that characterization of the crime as "fatal bodily harm" would have been more appropriate. The case was pending. According to an internal police inquiry, the police officer had not been on duty at the time and had been under the influence of alcohol. A programme to combat the problem of alcohol abuse in the police force had since been introduced. It drew on the services of psychologists and specialized non-governmental organizations (NGOs) and provided for the establishment of police health clinics.

12. In Slupsk, the unwarranted use by a police officer of his baton during disturbances following a basketball match had led to the death of a 13-year-old boy. The officer had been prosecuted and sentenced to eight years' imprisonment. The provincial and municipal chiefs of police responsible for supervision of the police intervention had been dismissed from their posts following an inquiry.

13. The case of two people who had been shot dead by a police officer in Warsaw had been variously interpreted and was highly controversial. Although the officer in question had been sentenced to seven years' imprisonment for homicide, the defence, supported by the police trade union, was appealing against the decision on the grounds that the officer had been acting in self-defence. He had allegedly been attacked by a group of men after thwarting an attempted robbery of an unarmed woman by firing warning shots in the air. The case was pending.

14. Systematic action was being taken to address unlawful behaviour by police officers. New psychological tests had been included in the recruitment procedure. An average of 80 per cent of candidates applying for service in recent months had been rejected on psycho-physical grounds. Training programmes were continuously adjusted in the light of analyses of major human rights abuses involving law enforcement officers. A police code of conduct had been formulated on the basis of United Nations recommendations. It stressed the need to respect human rights and the dignity of the individual. Almost 60 per cent of police officers were young recruits who had entered the force after 1990 and who had a positive attitude to human rights training.

15. All law enforcement agencies had an extensive control and review system that operated on several different levels. A complaint could be filed against a police officer through the legally sanctioned channels to his or her commanding officer, whose decision could be appealed against at successive levels up to and including the Commander-in-Chief. Secondly, members of the public could use a toll-free telephone number that had been created some three weeks previously to complain of police abuses of authority. The information was analysed by an internal police department and could lead to the filing of criminal charges. Thirdly, a complaint could be filed directly with the competent prosecutor's office, which conducted its investigations independently of the police force. Fourthly, the Ministry of Internal Affairs had established the office of Spokesperson for Victims' Rights, a mediator who operated independently of the Police and Border Police, cooperated closely with NGOs and could react immediately to complaints by victims of criminal acts, perpetrated in some cases by the police. A similar service was performed by the Civic Rights Ombudsman, an institution that had been in existence for over ten years. Watchdog functions were also exercised by NGOs such as the Helsinki Committee, Amnesty International and minority rights organizations, and by the free media. There had been no recorded attempt to prevent the media from disclosing information that tarnished the image of the law enforcement agencies. On the contrary, media publicity had often led to changes in the agencies concerned.

16. The phenomenon of fala or bullying in the Polish armed forces had first attracted public attention in the 1980s. It had never been an organized or officially approved activity but rather a sociological phenomenon associated with the hierarchical system prevailing in the armed forces. As the army was composed overwhelmingly of conscripts, many positions of command were occupied by young soldiers, which made supervision more difficult. However, as a result of changes in the organization of the armed forces in recent years, particularly the shortening of the period of compulsory military service, the phenomenon of fala was dying out. Associated crimes against human dignity were vigorously prosecuted by the Chief Military Prosecutor's Office. A total of 134 soldiers had been charged with fala.

17. Mr. SLEDZIK (Poland) said that, pursuant to the new Code of Criminal Procedure, the rights and duties of prisoners were regulated by act of Parliament. Article 4 of the Penal Code stipulated that penal, preventive and security measures were to be applied in a humanitarian way, with due respect for the prisoner's dignity. Prisoners had the right to appropriate food, if necessary in accordance with medical instructions, adequate clothing, free medical attention and health care. Prisoners could also, at their own cost, consult doctors of their choosing.

18. Of the total of 530 complaints about prison conditions received in 1999, 51 had been found to be justified. They concerned, for example, lack of proper lighting, overcrowding and failure to provide meals fulfilling religious requirements.

19. The rights and freedoms of prisoners were monitored by the prison administration, the courts, the Civic Rights Ombudsman and NGOs. Complaints filed through the administration were reviewed by the Inspection Department of the Prison Service and regional inspectorates, which also carried out routine inspections of all aspects of the functioning of prison facilities. The penitentiary judge, who was independent of the Prison Service, monitored general prison conditions and the legality and propriety of measures taken in prison facilities, focusing on coercive measures and improper treatment of prisoners by staff. The judge had unlimited access to the premises and all relevant documents, and was authorized to demand clarifications from the prison administration. In the event of flagrant transgressions, the penitentiary judge instructed the superior body in the prison administration hierarchy to remedy the situation. The judge's recommendations could even result in the closing of a facility. The decisions of the penitentiary judge could be appealed against in court. The court reviewed the case in closed session or through a hearing.

20. Prisoners could also direct complaints to the Civic Rights Ombudsman, governmental and non-governmental organizations and the European Court of Human Rights. Informal control was exercised by society at large through the "open door policy" and participation in the rehabilitation process.

21. The Prison Service ran 14 hospitals and 193 infirmaries and sickbays. If necessary, prisoners could be treated in non-prison facilities but the time spent in such facilities did not count towards execution of the penalty. Decisions by the medical personnel were subject to review by the appropriate medical commission and supervision by the Chief Medical Officer of the Prison Service.

22. Prisoners were entitled to unlimited contacts with their counsel. Under the new Penal Code, they could be represented in all matters by persons of trust, including representatives of NGOs, motivated by the aim of assisting in their social rehabilitation.

23. Although Poland did not compile separate statistical data concerning incidents of torture, every complaint, especially concerning unlawful treatment of a prisoner by a public official, was investigated in the light of any possible connection with torture or inhuman or degrading treatment. Among the justified complaints investigated to date, no such finding had been made.

24. Women prisoners were held separately from men and had access to extensive psychological and educational rehabilitation facilities. They were free to decorate their cells as they wished, to use make-up and to wear their own clothes. The purpose of such departures from the general principles of incarceration was to alleviate stress. As all immediate-contact prison staff were women, female prisoners were not at risk of sexual abuse by men. Moreover, special attention was given to psychological and other attributes in selecting staff for women's prisons. No sexual offences against women had been recorded during the reporting period.
25. Mr. PRZEMYSKI (Poland) said that article 142 of the Police Act had been rendered null and void by the entry into force on 1 September 1999 of the new Penal Code, making any abuse of power by a public official subject to its provisions. The sentence handed down by the regional court against the police officer involved in the Slupsk incident had been changed on appeal to an eight-year prison term on the basis of article 156 of the Penal Code (causing fatal bodily harm in the performance of official duties).
26. The Commander-in-Chief of the Polish police had categorically prohibited the keeping in police stations of any object that might be suspected of serving the purpose of exerting unlawful pressure, including torture. The vast majority of such objects had been confiscated following altercations with "pseudo-fans" following football matches. A small trophy museum at the Lublin Riot Police Squad premises of items abandoned by fans had been destroyed on the instructions of the commanding officer although apprehended individuals were never taken to that unit.
27. Training courses for law enforcement officers at all levels placed considerable emphasis on education and information about human rights, particularly the unlawfulness of torture and cruel or degrading treatment. All provincial police commanders of units of 3,000 to 10,000 officers had attended specialized training courses in the United States, the United Kingdom and the Netherlands. Similar courses for commanding officers of the Police and Border Guard were being conducted in Poland. Some 50 Polish police officers were serving in the United Nations International Police Task Force in Bosnia and Herzegovina. They monitored compliance with human rights standards by local police forces and lectured on related issues at the United Nations Police Academy in Sarajevo.
28. Mrs. JANISZEWSKA (Poland), replying to the Committee's questions about the functioning of the National Judiciary Council and the office of the Minister of Justice, said that the former had been set up in 1989. Its primary task was to consider candidates for appointment as judges to the Supreme Court, the Higher Administrative Court, common law courts and military courts, and transmit its recommendations to the President of the Republic. Its other main functions were to consider and approve proposals for moving judges to other posts, to express opinions on the professional conduct of judges, to adopt positions on amending the law on common courts, to take note of acts concerning the courts, and to supervise training and examinations for the judiciary. The membership of the National Judiciary Council comprised the Chief Justice of the Supreme Court, the Minister of Justice, the President of the Higher Administrative Court, a representative of the President of the Republic, 15 persons elected from among the members of all types of court under the Council's jurisdiction, 4 parliamentary deputies, and 2 senators. All members served for four years.

29. The Minister of Justice was a Cabinet member responsible for reporting to Parliament on the efficiency of the judicial system. The Minister was not subject to the ban on membership of political parties or on political activities, since he was not the public prosecutor. Rather, he performed the function of Attorney-General, in which capacity he either personally directed the public prosecution service or delegated certain functions to his deputies, one of whom was the national prosecutor.
30. The Attorney-General issued guidelines and instructions that were binding on the public prosecution service, and was empowered to take any acts within that Service's scope of operations or to order his subordinates to do so on his behalf, except for certain functions that the law assigned to him alone. He was also empowered to take over the functions of his subordinates if necessary.
31. Mr. EL MASRY (Country Rapporteur) thanked the delegation for their lucid and concise explanations, which had reflected a spirit of true cooperation and a keenness to engage in meaningful dialogue. However, on two issues the delegation's replies had merely echoed the information contained in the report: the definition of torture contained in the national legislation and the circumstances in which orders given by superiors could still be cited as justification for acts of torture.
32. Ms. GAER, after endorsing the previous speaker's appreciation of the delegation's efforts, said she was disappointed that it had been unable to reply in greater detail to her questions on sexual violence. In particular, she would like to know about the general provisions governing sexual violence in prisons, how complaints were handled, and what safeguards were in place. Although the statistics provided seemed to indicate that the arrangements for dealing with sexual violence in prisons were successful - in which case the Committee could benefit from Poland's experience - it was, sadly, often the case that the absence of reports on cases of sexual violence indicated lack of awareness on the part of the responsible authorities. She would like the delegation to elaborate further on such matters, if not during the current meeting then in the next periodic report.
33. The CHAIRMAN said that the delegation's willingness to respond to the Committee's questions was a reflection of the legal and administrative systems in Poland itself. He would like clarification on one point: in response to his question, the delegation had appeared to state that there was no universal jurisdiction over the crime of torture in Poland. On reflection, he supposed that meant that universal jurisdiction had been incorporated into domestic law through the assimilation of the Convention into Poland's new Constitution. Was that the case?
34. Mr. KNOTHE (Poland) said that his delegation had intended to answer in the affirmative to the Chairman's question on universal jurisdiction. With regard to the question of defining torture in national legislation, he felt that the Committee's queries had revealed the persistent and fundamental difference between their thinking and that of Poland's legislators. Not for the first time, it would be difficult for the Polish delegation to convey the Committee's concerns about definition of torture to its legal authorities. On the one hand, article 91 of the Constitution stated clearly that ratified international agreements should constitute part of the domestic legal order, and that such instruments - which included the Convention - took precedence in case of conflict. None of the distinguished legislators involved in the deliberations on the new Penal Code and

Constitution had doubted that an adequate definition of torture thenceforth existed, both de jure and de facto, in Polish law. On the other hand, he was concerned at the Committee's continuing dissatisfaction in that regard, and the likelihood that the next periodic report would reflect exactly the same view on the part of the Polish authorities, unless they could be made aware of the precise nature of the Committee's position.

35. The CHAIRMAN thought that the problem did not simply concern the differences between opposing legal cultures. All legal codes were based on certain common principles, one of which was the principle of legality, which the Anglo-Saxon tradition had indeed adopted from both the Roman and the continental legal systems. However, one of the assumptions that underlay the principle of legality was that no person could be accused or convicted of a crime that was not clearly defined and did not exist prior to the act. In the case of alleged acts of torture in Poland he appreciated that there would be no difficulty in referring to the definition of torture contained in the Convention, since Poland had ratified it. However, the fact that no definition of torture existed in domestic law would lead to great practical difficulties. What specific parts of the criminal code applied to torture, what were the penalties, and how precisely could one enact any implementation provisions?

36. Mr. YAKOVLEV (Alternate Country Rapporteur) said the Committee appreciated that countries - and Poland was not alone in that regard - would experience psychological and political difficulties in introducing new domestic legislation on torture. However, the thrust of the Convention's requirement was that abuse of a prisoner by an interrogator, who carried the full weight of the State behind him, was fundamentally different from bodily harm or abuse of power committed in everyday circumstances. Moreover, the conditions under which torture was carried out represented a threat to the very foundations of democracy.

37. The CHAIRMAN thanked the members of the delegation for their strenuous efforts to engage in full and open dialogue.

The public part of the meeting rose at 4.05 p.m.